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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,155	08/25/2003	Warren Cohen	ALLUM-1	1277
32132	7590	07/28/2005	EXAMINER	
LAMORTE & ASSOCIATES P.C. P.O. BOX 434 YARDLEY, PA 19067			STERLING, AMY JO	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

EA

<b>Office Action Summary</b>	<b>Application No.</b> 10/647,155	<b>Applicant(s)</b> COHEN, WARREN	
	<b>Examiner</b> Amy J. Sterling	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

This is the **Final Office Action** for application number 10/647,155 Mounting System for Mounting a Support to a Rail of a Deck, filed on 8/25/03. Claims 1-19 are pending. This **Final Office Action** is in response to applicant's reply dated 4/27/05. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

### ***Claim Rejections - 35 USC § 102***

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4784621 to Auclair.

Auclair teaches a base structure (22) having a top side and a bottom side, two opposing elements (24, 26) that include a first element and a second element extending from the bottom side of the base structure, wherein the first element has bends (42) that form a first plurality of stepped surfaces that are vertically offset and are at different distances from the bottom surface and wherein the second element has a second plurality of stepped surfaces (46) at distances from the bottom surface equal to the first stepped surfaces, wherein the first plurality of stepped surfaces and the second plurality of stepped surfaces extend in opposition toward each other across a gap, and an adjustment mechanism (90) and a support pole (15, 16) that extends from the top surface of the base structure, wherein the base defines a track (28), wherein one of the

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opposing elements (26) engages the track and is slidably adjustable with in the track (28).

Claims 1, 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5274888 to Payne.

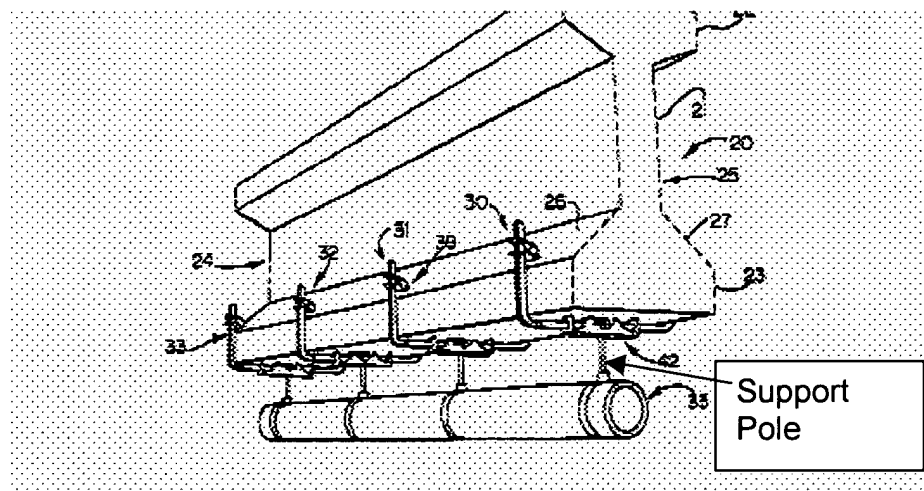
Payne teaches a base structure (29) having a top side and a bottom side, two opposing elements (10, 12) that include a first element and a second element extending from the bottom side of the base structure, wherein the first element has bends (11) that form a first plurality of stepped surfaces that are vertically offset and are at different distances from the bottom surface and wherein the second element has a second plurality of stepped surfaces (13) at distances from the bottom surface equal to the first stepped surfaces, wherein the first plurality of stepped surfaces and the second plurality of stepped surfaces extend in opposition toward each other across a gap, and an adjustment mechanism (20A) including bolts for selectively locking the opposing elements within the track, wherein the base defines a track (14), wherein the opposing elements (12) engages the track and is slidably adjustable with in the track (14).

Claims 10-12 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 6012691 to van Leeuwen et al.

The patent to van Leeuwen et al. discloses a mounting system having a flat structure (42), two opposing elements (37, 38) extending from the bottom side of the flat structure (42), which are positionally adjustable relative to the flat structure to create a

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selected distance between the opposing elements and wherein each opposing elements define a plurality of at least three opposing sets of stepped surfaces (54) that are vertically offset and extend towards each other and are generally parallel to the bottom side of the flat structure (42) and at different distances from the flat structure. Van Leeuwen et al. also discloses an adjustment mechanism (79) and a support pole (which is located in 82, See Drawing Below) that extends perpendicular to the flat base structure and extends from the top surface of the base structure (42).



Van Leeuwen et al. also discloses that the flat base structure (42) defines a track (See Description in Col. 5, line 40-46) , wherein both opposing elements (37, 38) are slidably adjustable and selectively positionable within the track.

***Claim Rejections - 35 USC § 103***

Claims 7-9 rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5274888 to Payne as applied to claims 1 above.

Payne shows the basic inventive concept as shown above with the exception that it does not specifically teach the dimensions of three quarters of an inch for a first stepped surface, one inch for a second stepped surface and one and a half inches for a third stepped surface as related to the bottom surface of the flat base structure. The step locations, as taught by Payne are a design choice which would be optimized by the user, and therefore these dimensions would have been obvious to one of ordinary skill in the art, used at the desired dimensions in order to be able to hang the desire device at the desired distance from the support device.

Claims 13-15 and 17-19 rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 6012691 to van Leeuwen et al. as applied to claims 10 above.

Van Leeuwen et al. shows the basic inventive concept as shown above with the exception that it does not specifically teach the dimensions of three quarters of an inch for a first stepped surface, one inch for a second stepped surface and one and a half inches for a third stepped surface as related to the bottom surface of the flat base structure. The step locations, as taught by van Leeuwen et al. are a design choice which would be optimized by the user, and therefore these dimensions would have been obvious to one of ordinary skill in the art, used at the desired dimensions in order

to be able to hang the desire device at the desired distance from the supporting element.

### ***Response to Arguments***

In response to applicant's argument that Leeuwen et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Leeuwen et al. reference is a clamp for holding structural items which would be reasonably pertinent to solving the same types of problems as the clamp which holds structural items, as taught by the present application.

The applicant has also argued that Leeuwen et al. does not disclose a plurality of opposing sets of stepped surfaces that are vertically offset. It is clear from the rejection above that this limitation is met, the device having many stepped surfaces which could be considered as part of a set. The sets are vertically offset in that one is higher than the next.

All other arguments are moot in view of new grounds of rejection presented above.


**Conclusion**

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached at 571-272-6788. The fax machine number for the Technology center is 703-872-9306 (formal amendments) or 571-273-6823 (informal amendments and communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

  
AJS

Amy J. Sterling  
7/11/05

  
KIMBERLY WOOD  
PRIMARY EXAMINER